

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-120066
	:	TRIAL NO. B-1105529
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
VICTOR CUNNINGHAM,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Victor Cunningham appeals from his conviction for the robbery of a Jefferson Avenue delicatessen. In exchange for his guilty plea to a single charge of robbery, reduced from aggravated robbery, the state dismissed an additional charge of robbery and recommended an agreed sentence of five years' imprisonment. The trial court personally addressed Cunningham, accepted his plea, found him guilty, and imposed the agreed sentence.

In his first assignment of error, Cunningham claims the trial court violated his Sixth Amendment right to counsel when it denied his pretrial motions to replace his court-appointed attorney. In his third assignment of error, he argues that the attorney appointed to represent him was ineffective. By entering a plea of guilty, however, Cunningham has waived his ability to raise claims alleging deprivations of constitutional rights that occurred prior to the entry of the guilty plea. *State v. Morgan*, 181 Ohio App.3d 747, 2009-Ohio-1370, 910 N.E.2d 1075, ¶ 25 (1st Dist.), citing *State v. Spates*, 64 Ohio

St.3d 269, 595 N.E.2d 351 (1992), paragraph two of the syllabus; *see also State v. Ketterer*, 111 Ohio St.3d 70, 2006-Ohio-5283, 855 N.E.2d 48, ¶ 104 and 116. The first and third assignments of error are overruled.

But the claim raised in Cunningham's second assignment of error, that his plea was not knowingly, voluntarily, and intelligently made, does survive the entry of his guilty plea. *See Morgan* at ¶ 25; *see also State v. Kelley*, 57 Ohio St.3d 127, 566 N.E.2d 658 (1991), paragraph two of the syllabus. Nonetheless, Cunningham's claim must fail.

Here, the trial court engaged Cunningham in the preplea colloquy mandated by Crim.R. 11(C). *See State v. Clark*, 119 Ohio St.3d 239, 2008-Ohio-3748, 893 N.E.2d 462, ¶ 25-26. The court personally addressed Cunningham and determined that he understood the nature of the charge against him and the maximum possible penalty and that he was voluntarily pleading guilty. The trial court strictly complied with its obligation to inform Cunningham of the constitutional rights he was waiving by pleading guilty to the charge. *See Crim.R. 11(C)(2)(c)*; *see also State v. Veney*, 120 Ohio St.3d 176, 2008-Ohio-5200, 897 N.E.2d 621, syllabus. And the court substantially complied with its other nonconstitutional notifications. *See Crim.R. 11(C)(2)(a) and (b)*; *see also Veney* at ¶ 14-16.

While the record submitted for our review reflects that Cunningham often responded to the trial court's inquiries simply by nodding his head "affirmatively," Cunningham also answered a number of the court's questions with appropriate and responsive language demonstrating his knowing, intelligent, and voluntary understanding of his plea. The trial court also clarified that the only binding promises made to Cunningham in regard to the plea deal and agreed sentence were those stated on the record by the trial court. Under the totality of the circumstances, we hold that Cunningham subjectively understood the implications of his plea and the rights he waived. *See Clark* at ¶ 31. The second assignment of error is overruled.

Therefore, the trial court's judgment is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., CUNNINGHAM and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on August 29, 2012
per order of the court _____.
Presiding Judge